

Law Today Live Doc. Id. 15648

PUNJAB AND HARYANA HIGH COURT

Before: Sudip Ahluwalia, J.

Criminal Revision No.1135 of 2020

Decided on: 18.11.2020

Suresh

Petitioner

Versus

State of Haryana

Respondent

Present:

Mr. Aditya Sanghi, Advocate for the Petitioner.

Mr. B.S. Virk, Dy. Advocate General, Haryana for the Respondent/State.

Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Section 22(C), 36-A -- Drugs and Cosmetics Act, 1940 (23 of 1940), Section 18(A), 18(C) -- Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) -- Default bail – Challan without FSL -- Petitioner ought to be granted bail in any case since he has already remained in detention for more than 8½ months and there is no involvement in any other case under the NDPS Act, and on account of on-going Covid-19 Pandemic, the trial which could not commence is likely to take a considerable time in its completion.

-- Validity of Division Bench's decision in Ajit Singh alias Jeeta's case (Law Today Live Doc. Id. 14121) cannot at this stage be said to be altogether beyond controversy, since the matter has now been referred for consideration afresh in view of the decision in Julfkar's case (Law Today Live Doc. Id. 15385) which has subsequently been followed in the case of Rinku vs. State of Haryana (Law Today Live Doc. Id. 15615).

Criminal Revision allowed at this stage and the Petitioner is permitted to be conditionally released on bail to the satisfaction of the Ld. Trial Court concerned. In case of any different result coming forth from that in the decision in Ajit Singh alias Jeeta's case, the State would be at liberty to seek cancellation/modification of the order, if warranted at that stage.

(Para 9, 10)

Cases referred:

1. Ajit Singh @ Jeeta and another vs. State of Punjab, Criminal Revision No.4659 of 2015 = Law Today Live Doc. Id. 14121.
2. Shankar vs. State of Haryana, CRM-M No.44412 of 2019.
3. Narendra Kumar Amin vs. CBI and others, 2015(3) SCC 417.
4. Julfkar vs. State of Haryana, CRR No.1125 of 2020 = Law Today Live Doc. Id. 15385.
5. Akash Kumar @ Sunny vs. State of Haryana, CRR No.1713 of 2019.
6. Rinku vs. State of Haryana, CRR No.1150 of 2020 = Law Today Live Doc. Id. 15615.
7. M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020 = Law Today Live Doc. Id.

15611.

8. Melody Yodhanpuri vs. State of Punjab, Criminal Revision No.983 of 2020.

SUDIP AHLUWALIA, J. –

This Criminal Revision Petition is directed against the Impugned Order dated 31st August, 2020 passed by the Ld. Additional Sessions Judge, Fatehabad, in case arising out of FIR No.38, dated 28th February, 2020, under Sections 22(C) of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985 (for short, the NDPS Act) and Sections 18(A) and 18(C) of Drugs and Cosmetics Act, 1940 registered at Police Station Sadar Tohana, District Fatehabad, Haryana.

2. Vide the Impugned Order, the Ld. Additional Sessions Judge, Fatehabad had dismissed the Petitioner's Application for Bail under Section 36-A of the NDPS Act read with Section 167(2) of the Cr.P.C.

3. Background of the matter is that the Petitioner was allegedly found in possession of 58 bottles of Wincirex Syrup, 130 tablets of Tramadol Clovidol, 120 tablets of Alprazolam and 5 strips of Combikit Clean Kit. The first three of these four items constitutes contraband fall under Section 2(c) the NDPS Act, while the last item (25 tablets of Combikit Clean Kit) fall under Section 18-A/18-C of the Drugs and Cosmetics Act. The Petitioner was arrested on 28th February, 2020 and produced before the Court on the following day. Challan against him was submitted subsequently but it was not accompanied by the FSL Report pertaining to the seized contraband. The Petitioner, therefore, sought Statutory/Default Bail under Section 36-A of the NDPS Act read with Section 167(2) of the Cr.P.C. By contending that the Challan so submitted was incomplete in the absence of the FSL Report, on account of which he was entitled to Statutory/Default Bail in view of the decision passed by a Division Bench of this Court in **Criminal Revision No.4659 of 2015**, which was a bunch matter of which the leading case was '**Ajit Singh @ Jeeta and another vs. State of Punjab = Law Today Live Doc. Id. 14121**'.

4. It may be mentioned that the aforesaid decision of the Division Bench in **Ajit Singh alias Jeeta's case (supra)** was passed in view of a question sent up for consideration in those seven cases, which was as follows :-

"Whether the presentation of report under Section 173(2) Cr.P.C. by the police without the report of Chemical examiner/Forensic Science Laboratory amounts to incomplete challan and in the absence of any extension of time under Section 36-A(4) of the N.D.P.S. Act, the accused is entitled to bail under Section 167(2) Cr.P.C.?"

5. The Division Bench answered the above reference by holding that a Challan presented without Chemical Examiner's Report can only be termed as an incomplete one, which would result in Default Bail to the accused unless an Application was moved by the Investigating Agency with a prayer for extension of time. The relevant extracts from the decision of the Division Bench are set down as below :-

"For this reason as well, it is essential that the report of the Chemical Examiner be included in the report under Section 173 Cr.P.C. and without which it can at best be termed to be an incomplete challan depriving the

Magistrate of relevant material take cognizance and if it is not submitted within the requisite period of 180 days, it would essentially result in a default benefit to the accused unless an application is moved by the Investigating Agency apprising the Court of status of investigation with a prayer for extension of time to the satisfaction of the Court.

We emphasize on the stringent aspect of the N.D.P.S. Act which would compellingly persuade us to take the aforesaid view. Without determining the nature and content of the contraband, it would be draconian to propel an accused into the throes of a trial. The liberty of an individual would constantly be imperiled at the hands of dubious officials of the police who may venture to falsely implicate a person.

It is for this reason that we would unhesitatingly conclude that the Chemical Examiner's report is an essential ; integral and inherent part of the investigation under the N.D.P.S. Act as it would lay the foundation of an accused's culpability without which a Magistrate would not be enabled to form an opinion and take cognizance of the accused's involvement in the commission of offence under the Act."

6. The Ld. Court below nevertheless rejected the Petitioner's Application by relying upon a Single Bench's decision of this Court in case of '**Shankar vs. State of Haryana – CRM-M No.44412 of 2019**', in which it was held that the above decision of the Division Bench was *per incuriam* since it had not taken into account an earlier decision of the Supreme Court in the case of '**Narendra Kumar Amin vs. CBI and others, 2015(3) SCC 417**', wherein it was mentioned that once a Police Report has been filed as defined in Section 2(r) read with Section 173(2) of the Cr.P.C., the accused cannot claim that since along with the Police Report some documents have not been attached, hence the accused is entitled to Bail under Section 167(2) of the Cr.P.C.

7. Ld. Counsel for the Petitioner has however relied upon a subsequent decision of another Single Bench of this Court in **CRR No.1125 of 2020 - Julfkar vs. State of Haryana = Law Today Live Doc. Id. 15385**, in which the said Bench disagreed with the decision of the Single Bench in **CRR No.1713 of 2019 - Akash Kumar @ Sunny vs. State of Haryana** as it was of the view that a smaller Bench could not have declared the Judgment of a Larger Bench to be *per incuriam*. The concerned Petitioner was therefore granted bail by the Single Bench in the subsequent decision with a further direction that the matter be referred to a Division Bench for consideration of the controversy which had thus arisen. The relevant observations of the Bench in **Julfkar's case (supra)** are set out as below :-

*"I am now faced with a situation where I am confronted with two Single Bench judgments in **Akash Kumar alias Sunny (supra)** and **Shankar (supra)** and a binding Division Bench judgement in **Ajit Singh alias Jeeta (supra)**. By virtue of the doctrine of stare decisis, the Single Bench judgements in **Akash Kumar alias Sunny (supra)** and **Shankar (supra)** are binding on me as they lay down a proposition of law although at variance with the law laid down by the Division Bench in **Ajit Singh alias Jeeta (supra)**. However, I express my respectful disagreement with the aforementioned Single Bench judgements on the ground that a smaller Bench could not have declared the judgement of a larger Bench to be *per incuriam* in view of the doctrine of stare decisis and also that the*

principle of per incuriam has been applied erroneously. Judicial discipline demands that a reference be made to a Division Bench regarding the validity and correctness of the aforementioned Single Bench judgements. The file of this case be, thus, placed before Hon'ble the Chief Justice with a request to constitute a Division Bench for consideration of this matter. Since the law has been unsettled and is leading to confusion amongst the trial Courts, the matter may be considered urgently.

Meanwhile, it is directed that the petitioner be released on bail on furnishing bail and surety bonds to the satisfaction of the trial Court."

8. Relying on the decision in **Julfkar's case (supra)**, another Single Bench thereafter has similarly granted Default Bail to the Petitioner in '**CRR No.1150 of 2020 - Rinku vs. State of Haryana = Law Today Live Doc. Id. 15615**' since in another subsequent decision in '**M. Ravindran vs. The Intelligence Officer, Directorate of Revenue Intelligence, Criminal Appeal No.699 of 2020 = Law Today Live Doc. Id. 15611**', the Apex Court has held that subsequent presentation of FSL Report after submission of the Bail Application, will not extinguish the right of a Petitioner to seek Default Bail. Another Single Bench of this Court in '**Melody Yodhanpuri vs. State of Punjab, Criminal Revision No.983 of 2020**', had similarly granted Bail by relying upon the Division Bench decision in **Ajit Singh @ Jeeta's case (supra)**.

9. In the given circumstances, this Court is also of the view that at this stage the Petitioner ought to be granted Bail in any case since he has already remained in detention for more than 8½ months now and there is not record of his involvement in any other case under the NDPS Act, and on account of on-going Covid-19 Pandemic, the trial which could not commence is likely to take a considerable time in its completion. Further, the validity of the decision in disregarding the Division Bench's decision in **Ajit Singh alias Jeeta's case (supra)** cannot at this stage be said to be altogether beyond controversy, since the matter has now been referred for consideration afresh in view of the decision in **Julfkar's case (supra)** which has subsequently been followed in the case of **Rinku vs. State of Haryana (supra)**.

10. Taking into account all the above circumstances, the Criminal Revision Petition is allowed at this stage and the Petitioner is permitted to be conditionally released on bail to the satisfaction of the Ld. Trial Court concerned. It is however clarified that in case of any different result coming forth from that in the decision in **Ajit Singh alias Jeeta's case (supra)**, the State would be at liberty to seek cancellation/modification of this order, if warranted at that stage.

11. Disposed off.

Petition allowed.
